



AMERICAN IMMIGRATION LAW FOUNDATION

PRACTICE ADVISORY¹
Revised September 2003

HOW TO FILE A PETITION FOR REVIEW

By Trina Realmuto² and Anne Seymour

I. HIGHLIGHTS OF THIS ADVISORY

This Practice Advisory addresses the current procedures and general requirements for filing and litigating a petition for review. In addition, the advisory addresses the following fundamental points of which counsel should be aware when filing a petition for review:

- * **Petitions for review must be filed no later than 30 days after the date of the decision of the Board of Immigration Appeals (BIA) or the Bureau of Immigration and Customs Enforcement (BICE). This deadline is jurisdictional and, with limited exceptions, cannot be tolled. The petition for review must be received by the clerk's office on or before the thirtieth day and not merely mailed by that date.**
- * **The 30-day deadline for filing a petition for review of the underlying decision is not extended by the filing of a motion to reopen or reconsider nor is it extended by the grant or extension of voluntary departure. To obtain review of issues arising from a BIA decision and issues arising from the denial of a motion to reopen or reconsider, separate petitions for review of each BIA decision must be filed.**
- * **Filing a petition for review does not stay the individual's removal from the country.**
- * **BICE can deport an individual before the 30-day deadline expires.**

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*** If in doubt about whether the court of appeals has jurisdiction, it may be prudent to timely file the petition for review to preserve the individual’s right to seek review.**

Sample petitions for review are attached as Appendices A and B. A copy of IIRIRA § 309 is attached as Appendix C. A list of websites for the courts of appeals is attached as Appendix D. A list of addresses for service of the petition is attached as Appendix E.

The information in this document is current as of September 23, 2003, but does not substitute for individual legal advice supplied by a lawyer familiar with a client’s case.

II. BACKGROUND AND INTRODUCTION

A petition for review is the document filed by, or on behalf of, an individual seeking review of an agency decision in a circuit court of appeals. In the immigration context, a petition for review is commonly filed to obtain review of a decision of deportation, exclusion, or removal issued by the Board of Immigration Appeals (BIA). In addition, a petition for review may be filed to obtain review of a removal order issued by the Bureau of Immigration and Customs Enforcement (BICE) under certain provisions of the Immigration and Nationality Act (INA).

Through the enactment of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress eliminated the distinction between deportation and exclusion proceedings and combined them into a single “removal” proceeding. Judicial review of final removal orders, resulting from removal proceedings commenced after IIRIRA’s effective date (April 1, 1997), is governed by INA § 242, 8 U.S.C. § 1252. Judicial review of final deportation or exclusion orders, resulting from proceedings commenced before April 1997, is generally governed by transitional rules set forth in IIRIRA § 309. A copy of IIRIRA § 309 is reprinted in Appendix C.

III. COURT OF APPEALS JURISDICTION OVER PETITIONS FOR REVIEW

Determining whether a circuit court possesses subject matter jurisdiction to review a decision or a particular issue often requires a complicated legal analysis. Such determinations also are highly dependent on constantly evolving case law. This section is meant to illustrate the types of decisions that may be reviewed through a petition for review. It is not exhaustive and should not be substituted for independent legal research regarding governing case law. For further discussion of court of appeals jurisdiction over petitions for review, see *Judicial Review of Deportation and Removal Cases*, AILA Immigration and Nationality Law Handbook, Volume 2, pages 327-337 (2002-2003) and Chapter 10: Federal Judicial Review, Kurzban’s Immigration Law Sourcebook (8th ed. 2002).³

The following are examples of decisions that may be reviewed through a petition for review unless barred by statute:

³ AILF is preparing a detailed advisory discussing jurisdiction and judicial review. Check the AILF website for updates.

A BIA decision to:

- * issue a final removal order, including denial of asylum or cancellation, and including an affirmance without opinion (unless barred by statute)
- * deny a motion to reconsider or a motion to reopen, or
- * affirm an Immigration Judge's denial of an asylum application.

An order of removal issued by BICE under:

- * INA § 241(a)(5) (reinstatement of removal) where petitioner is not barred by INA § 242(a)(2)(C) (relating to certain criminal offenses), or
- * INA § 238(b) where petitioner is challenging whether the conviction is an aggravated felony.

Review of certain decisions in the courts of appeals is barred by statute. See INA § 208(a)(3), 8 U.S.C. § 1158(a)(3); INA § 242(a)(2), 8 U.S.C. § 1252(a)(2) and IIRIRA § 309(c)(4). In general, these bars preclude direct review of expedited removal orders, discretionary judgments, and petitions filed by, or on behalf of, individuals found removable due to certain criminal offenses.⁴ However, courts retain jurisdiction to determine whether they have jurisdiction over the petition for review. Issues that may still be reviewed by the courts of appeals include, but are not limited to: (1) whether petitioner has been charged with and found deportable for a criminal offense; (2) whether the offense constitutes an aggravated felony or a crime involving moral turpitude; and (3) whether petitioner meets certain non-discretionary statutory eligibility requirements for discretionary relief.

As discussed in Section III, below, if it is unclear whether subject matter jurisdiction lies in district court via habeas corpus petition or in circuit court via petition for review, it may be advisable to timely file a petition for review to preserve petitioner's right to seek review.

IV. PETITION REQUIREMENTS

Filing Deadline

A petition for review "must be filed not later than thirty days after the date of the final order" of removal or the final order of exclusion or deportation. *See* INA § 242(b)(1), 8 U.S.C. § 1252(b)(1) (removal orders); IIRIRA § 309(c)(4)(C) (deportation and exclusion orders). Emphasis added.

The thirty-day deadline for filing a petition for review of the underlying decision is not extended by the filing of a motion to reopen or reconsider nor is it extended by the grant or extension of voluntary departure. To obtain review of issues arising from a BIA decision and issues arising from the denial of a motion to reopen or reconsider, separate petitions for review of each BIA decision must be filed. If separate petitions are not filed, the Court's review may be limited to the issues arising from the BIA decision for which review is sought. For example, if a petition for review of the BIA's decision denying a motion to reopen or reconsider has been filed but a

⁴ If an individual is subject to one of the jurisdictional bars enumerated in INA § 242(a)(2) or IIRIRA § 309(c)(4), federal court review may be obtained by filing a petition for a writ of habeas corpus in district court pursuant to 28 U.S.C. § 2241. *See INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

petition for review of the BIA decision underlying the motion has *not* been filed, issues arising from the underlying BIA decision may not be preserved for review.

The deadline for filing a petition for review is “mandatory and jurisdictional” and is “not subject to equitable tolling” *Stone v. INS*, 514 U.S. 386, 405 (1995). Because the thirty-day deadline is jurisdictional, circuit courts lack authority to consider late-filed petitions for review.⁵

The thirty-day time period begins running from the date of the BIA’s decision affirming the Immigration Judge. If the BIA denied a motion to reopen or reconsider, the thirty-day time period begins running from the date of the BIA decision denying the motion. In reinstatement cases or administrative deportation cases under INA § 238(b), the thirty-day deadline begins running from the date of the final BICE order. The petition for review must be received by the clerk’s office on or before the thirtieth day and not merely mailed by that date.

Where the thirty-day deadline has expired due to ineffective assistance of counsel, new counsel may consider filing a motion to reopen to the BIA (provided the motion is filed within the ninety day statutory time period for filing motions to reopen). Counsel may also consider filing a motion requesting that the BIA *sua sponte* rescind and re-issue its decision to allow petitioner to seek judicial review.

Attachments and Contents

Under INA § 242(c), 8 U.S.C. § 1252(c), a petition for review must and need only: (1) include a copy of the final administrative order; and (2) state whether any court has upheld the validity of the order, and if so, state which court, the date of the court’s ruling, and the type of proceeding.

The petition should state the name of each individual petitioning for review and should not use “et al.” to reference more than one petitioner. FRAP 15(a)(2)(A). For example, where a family is in immigration proceedings but the BIA decision only references the lead respondent, the petition for review should name each family member whose case was decided by that order, even if not specifically mentioned in the order.

A sample petition for review is attached as Appendix A. Although it is not necessary at this stage to discuss the jurisdictional basis or merits of the petition a more detailed sample petition for review, containing the basis for jurisdiction and venue, is also provided as a reference and is attached as Appendix B.

V. STAY OF REMOVAL

The Bureau of Immigration and Customs Enforcement (BICE) can deport petitioner before the 30-day deadline for filing a petition for review has run.

⁵ There are very limited exceptions to this principal. For example, courts have permitted equitable tolling where ineffective assistance resulted in the individual not receiving notice of the BIA’s decision. Courts have excused late-filed petitions for review or permitted transfer under 28 U.S.C. § 1631 in rare circumstances. AILF will issue a separate advisory soon to address these situations.

BICE may deport an individual as soon as the BIA issues its order. In reinstatement cases under INA § 241(a)(5) and administrative removal cases under INA § 238(b), deportation may occur as soon as BICE issues its removal order. In the post-AEDPA and IIRIRA era, serving the petition for review does not stay deportation, “unless the court orders otherwise.” Compare former INA § 1106(a)(3), 8 U.S.C. § 1105a(a)(3) with INA § 242(b)(3)(B), 8 U.S.C. § 1252(b)(3)(B) and IIRIRA § 309(c)(4)(F). Thus, petitioner also may want to file for a stay of the removal order pending the petition for review. The court must grant the stay request to prevent petitioner’s removal from the country.

The varying circuit standards for, and strategic pros and cons of, applying for a stay of removal are discussed in greater detail in AILF’s March 2003 Practice Advisory entitled, *Applying for a Stay of Removal in Federal Court Proceedings* (http://www.ailf.org/lac/lac_pa_031703.asp).

VI. WHERE TO FILE THE PETITION FOR REVIEW

Venue is restricted to the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. INA § 242(b)(2), 8 U.S.C. § 1252(b)(2); IIRIRA § 309(c)(4)(D). This requirement imposes a special hardship on individuals who are ordered removed while detained at detention centers in remote locations where counsel is often limited or unavailable.

VII. FILING FEE

The filing fee for a petition for review is usually \$100, but counsel should check local court rules to verify the fee amount. A list of web addresses for the U.S. courts of appeals is attached in Appendix D and can also be located at www.uscourts.gov. Petitioner may request leave to proceed *in forma pauperis* by filing a motion and supporting affidavit with the court. See FRAP 24(b) and corresponding local circuit rules.

VIII. SERVICE ON RESPONDENT

Whom to Sue

Through the enactment of IIRIRA § 306(a)(2), Congress changed the designated respondent in a petition for review from the Immigration and Naturalization Service (INS) to the Attorney General. Compare former INA § 106(a)(3), 8 U.S.C. § 1105a(a)(3) with INA § 242(b)(3)(A), 8 U.S.C. § 1252(b)(3)(A). Therefore, in *removal* cases, the respondent is the Attorney General, John Ashcroft.

Judicial review of *deportation and exclusion* cases is governed by IIRIRA’s transitional rules. IIRIRA § 309(c)(1)(B) provides that the pre-IIRIRA judicial review provisions govern (with limited exceptions).⁶ Thus, former INA § 106(a)(3), which requires that actions “shall be brought against the Immigration and Naturalization Service, as respondent,” should govern. However, the Homeland Security Act of 2002 abolished INS and transferred its functions to the Department of Homeland Security. Pub. L. 107-296, tit. IV, subtit. D, E, F, 116 Stat. 2135,

⁶ Under IIRIRA § 309(c)(1)(B), with limited exceptions, deportation and exclusion “proceedings (including judicial review thereof) shall continue to be conducted without regard to” the amendments made by IIRIRA subtitle III-A. (Emphasis added).

2192 (Nov. 25, 2002). Thus, the predecessor organization, DHS, would, under a pure interpretation of IIRIRA § 309(c)(1)(B), be the logical respondent to a petition for review in deportation and exclusion cases.

Since INA § 242(b)(3)(A) provides a current statutory basis for naming the Attorney General as a respondent, it may also be advisable to name the Attorney General in addition to DHS. Moreover, the courts and government counsel implicitly accept that the Attorney General is a proper respondent in deportation and exclusion cases. That is, no circuit court has expressly held, nor do we believe that the government has argued, that the Attorney General cannot be the named respondent on direct review of a deportation or exclusion order.

Whom to Serve

The petition must be served “on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 240 was entered.” INA § 242(b)(3)(A), 8 U.S.C. § 1252(b)(3)(A).⁷

Serve the Attorney General by sending a complete copy of the petition for review to the address set forth in Appendix E. Attorneys from the Office of Immigration Litigation (OIL), a division within the Civil Division of the Department of Justice, litigate on behalf of the Attorney General with one exception.⁸ Thus, it is advisable to also serve a copy of the petition on OIL. After receiving a copy of the petition, the OIL attorneys assigned to the case will usually enter their appearance before the court by letter and should inform petitioner’s counsel.

To serve the officer in charge of the district, counsel should serve the BICE (Interim) Field Office Director for Detention and Removal with jurisdiction over the district where the final administrative order was issued. As not all of the Field Office Directors have been appointed (and most are currently appointed on an interim basis) at the time of this writing, counsel may need to make inquiries to learn the name of the officer in charge of detention and removal in their area.

At the same time, petitioner must file a certificate of service listing the names and addresses of those served and the manner of service. Federal Rules of Appellate Procedure (FRAP) 15(c). A list of addresses for service is attached as Appendix E. FRAP 15(c) further requires that petitioner must give “the clerk enough copies of the petition . . . to serve each respondent.” Presumably, an original plus one copy of the petition must be filed where the Attorney General is the only named respondent. However, counsel should verify the number of copies required by checking local procedures or contacting the clerk’s office. *See also* FRAP 25 (Filing and Service) and corresponding local court rules.

Service of Future Pleadings

After opposing counsel has entered their appearance, future pleadings “must be made on the party’s counsel” by a prescribed method. FRAP 25(b)&(c). Such pleadings must be filed with

⁷ If the order of removal was entered under another section of law, for example, INA §§ 238(b) or 241(a)(5), counsel presumably is still bound by the service requirements of INA § 242(b)(3)(A), 8 U.S.C. § 1252(b)(3)(A).

⁸ In the Second Circuit, Assistant US Attorneys handle petitions for review.

either (1) an acknowledgement of service by the person served, or (2) a statement by the person effectuating service attesting to the date and manner of service, the names of those served, and the appropriate mail, email or delivery address or facsimile number, depending on the manner of service. The proof of service may appear on or be affixed to the pleading. See FRAP 25(d)(3). The local rules set out acceptable methods of service. A list of websites for the courts of appeals is attached as Appendix D.

IX. LITIGATING THE PETITION IN THE COURT OF APPEALS

Admission and Entry of Appearance

Attorneys must be admitted to practice before the court of appeals in which the petition for review is filed or, in some courts, must file an application for admission either simultaneously or within a proscribed time period. Some courts allow an attorney who is not admitted to appear pro hac vice or if appointed to represent a petitioner proceeding in forma pauperis.

Virtually all courts of appeals require counsel to enter an appearance in each case. Entry of Appearance forms are generally available on the court's website and from the clerk's office.

For further information regarding admission and appearance requirements, counsel should consult FRAP 46 and corresponding local circuit rules. Information is also available on court websites. See Appendix D, listing websites for the courts of appeals.

Federal Rules of Appellate Procedure

The rules and procedure for litigation in the courts of appeals are governed by the Federal Rules of Appellate Procedure in conjunction with each circuit's local rules. This advisory provides a brief overview of appellate procedure related to petition for review litigation, however, it does not address all of the Federal Rules of Appellate Procedure nor does it address local circuit rules.

Once a petition for review is filed, the court generally issues an order/schedule for the parties to file the Certified Record of Proceedings (also known as the "Administrative Record"), Petitioner's Opening Brief (and possibly Excerpts of Record), Respondent's Answering Brief (and possibly Excerpt of Record), and Petitioner's Reply Brief (optional).

Certified Record of Proceedings

The agency is obligated to file the Certified Record of Proceeding (also called the Certified Administrative Record), within 40 days of service of the petition for review. FRAP 17(a). The record must include (1) the order involved; (2) any findings or report on which it is based; and (3) pleadings, evidence, and other parts of the proceeding before the agency, including the transcripts of hearings. FRAP 16(a). Where the petition seeks review of a BIA order, the record is prepared by the Executive Office for Immigration Review and filed by OIL.

Briefing Schedule

INA § 242(a)(2)(C), 8 U.S.C. § 1252(a)(2)(C) states that petitioner must serve and file the opening brief no later than forty days after the date on which the administrative record is available, and further states that petitioner may serve and file a reply brief within fourteen days after service of the government's brief. These deadlines may only be extended by motion upon a

showing of good cause. Additionally, if the brief is not filed, the INA instructs courts to dismiss the appeal unless a manifest injustice would result. Id.

While it is important to know the statutory requirements of the briefing schedule, it is not uncommon for counsel on either side to move to extend the briefing schedule or move to hold briefing in abeyance. Written motions are governed by FRAP 27 and corresponding local rules. Some courts also allow telephonic motions for an extension of time to file a brief.

If the government has not filed the certified record of proceedings, petitioner should move for an extension of the briefing schedule. The court should grant the motion and delay briefing until the record is submitted. If the court denies the motion and requires petitioner to file an opening brief without the record, petitioner must comply with the court's order. If counsel has all or some of the record below (perhaps as a result of prior representation or a Freedom of Information Act Request), petitioner should file a motion for leave to file and the relevant portions of the record and should cite to the improvised record in the opening brief. Whether or not counsel has all or some of the record below, counsel should file written objections to the court order instructing the brief to be filed without submission of the record. Such an order would infringe on petitioner's right to appeal, as counsel cannot adequately present an appeal without access to the complete record below.

In addition, the briefing schedule may be delayed or vacated if the government files a motion to dismiss for lack of subject matter jurisdiction claiming that petitioner is barred from direct review in the court of appeals (under INA § 242(a)(2), 8 U.S.C. § 1252(a)(2) or IIRIRA § 309(c)(4)).

When filing briefs in the circuit courts, counsel should consult FRAP 28 (Briefs), 30 (Appendix to the Briefs), 31 (Serving and Filing), and 32 (Form of Briefs, Appendices, and Other Papers) as well as all corresponding local rules. A list of websites for the courts of appeals is attached as Appendix D.

Supplemental Authorities – 28(j) Letters

If pertinent and significant authorities come to petitioner's attention after briefing is completed or after oral argument but before the court issues a decision, counsel should advise the court of the supplemental citations pursuant to FRAP 28(j). The advisal is made by letter and copied to opposing counsel. "The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited." FRAP 28(j).

Oral Argument

Pursuant to FRAP 34, any party may file, or a court may require by local rule, a statement explaining why an oral argument should, or need not, be permitted. Oral arguments must be permitted unless a panel of three judges decides that:

- (1) the appeal is frivolous;
- (2) the dispositive issue(s) have already been decided; or
- (3) the facts and arguments are adequately presented in the briefs and records.

The court clerk will notify the parties of the date, time, place, and time allotted for argument if the court determines oral argument is necessary.

Judgment and Post-Judgment Review Timing

The judgment (or decision) is entered on the docket by the clerk after he or she receives the court's opinion or upon the court's instruction (where judgment is rendered without opinion). FRAP 36 (Entry of Judgment). A petition for rehearing or petition for rehearing en banc may be filed within 45 days after entry of judgment, unless otherwise specified by the court or local rule. FRAP 35 (En Banc Determination) and 40 FRAP (Petition for Panel Rehearing). Unless the court directs otherwise, the mandate will automatically issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. FRAP 41.

APPENDIX A: SAMPLE PETITION FOR REVIEW

Notes:

1. Complete ALL underlined spaces (except “Case File No.”) as appropriate, depending on whether petitioner seeks review of a final order of removal, deportation, or exclusion. The Court Clerk’s Office will assign a Case File Number.
2. In *deportation and exclusion* cases, it may also be advisable to name the Department of Homeland Security as a respondent. See section VIII, above.
3. Attach a copy of the BIA decision. If seeking review of an order of removal under INA §§ 241(a)(5) or 238(b), attached a copy of the BICE decision.
4. Attach a Certificate of Service, attesting to service on (1) the Attorney General; (2) the Office of Immigration Litigation; and (3) BICE Field Office Director for Detention and Removal.
5. Always check local circuit court rules regarding filing fee amount, pleading format, the number of copies required for submission, and rules regarding admission and entry of appearance as counsel.

UNITED STATES COURT OF APPEALS FOR THE _____ CIRCUIT

<u>Name of Petitioner,</u>)	
)	
Petitioner,)	Case File No. _____
)	
v.)	
)	Immigration File No.: A _____
John ASHCROFT,)	
Attorney General,)	
)	PETITION FOR REVIEW
Respondent .)	
_____)	

The above-named Petitioner hereby petitions for review by this Court of the final order of removal / deportation / exclusion entered by the Board of Immigration Appeals / Bureau of Immigration and Customs Enforcement (BICE) (if ordered removed under INA §§ 241(a)(5) or 238(b)) on date of decision. A copy of the decision is attached.

To date, no court has upheld the validity of the order. (Note: If the validity of the order has been upheld, state name of the court, date of court’s ruling, and the kind of proceeding).

Dated: _____

Respectfully submitted,

Attorney/s Name

Firm / Organization
Address
Telephone:
Facsimile:
Attorney/s for Petitioner

APPENDIX B: SAMPLE PETITION FOR REVIEW (MORE DETAILED)

Notes:

1. Complete ALL underlined spaces (except “Case File No.”) as appropriate, depending on whether petitioner seeks review of a final order of removal, deportation, or exclusion. The Court Clerk’s Office will assign a Case File Number.
2. In *deportation and exclusion* cases, it may also be advisable to name the Department of Homeland Security as a respondent. See section VIII, above.
3. Attach a copy of the BIA decision. If seeking review of an order of removal under INA §§ 241(a)(5) or 238(b), attached a copy of the BICE decision.
4. Attach a Certificate of Service, attesting to service on (1) the Attorney General; (2) the Office of Immigration Litigation; and (3) BICE Field Office Director for Detention and Removal.
5. Always check local circuit court rules regarding filing fee amount, pleading format, the number of copies required for submission, and rules regarding admission and entry of appearance as counsel.

UNITED STATES COURT OF APPEALS FOR THE _____ CIRCUIT

<p>[Name of Petitioner],</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 40px;">v.</p> <p>John ASHCROFT,</p> <p>Attorney General,</p> <p style="padding-left: 40px;">Respondent .</p> <hr style="width: 100%;"/>	<p>)</p>	<p>Case File No. _____</p> <p>Immigration File No.: A _____</p> <p>PETITION FOR REVIEW</p>
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The above-named Petitioner hereby petitions for review by this Court of the final order of removal / deportation / exclusion entered by the Board of Immigration Appeals / Bureau of Immigration and Customs Enforcement (BICE) (if ordered removed under INA §§ 241(a)(5) or 238(b)) on date of decision. A copy of the decision is attached.

To date, no court has upheld the validity of the order. (Note: If the validity of the order has been upheld, state name of the court, date of court’s ruling, and the kind of proceeding).

Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1) (removal cases) / § 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (deportation and exclusion cases).

Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2) (removal cases) / IIRIRA § 309(c)(4)(D) (deportation/exclusion cases) because the immigration judge / BICE (in cases under INA §§ 241(a)(5) or 238(b)) completed proceedings in City, State, within the jurisdiction of this judicial circuit.

This petition is timely filed pursuant to 8 U.S.C. § 1252(b)(1) (removal) / IIRIRA § 309(c)(4)(C) (deportation / exclusion) as it is filed within 30 days of the final order of removal / deportation / exclusion.

Dated: _____

Respectfully submitted,

Attorney/s Name
Firm / Organization
Address
Telephone:
Facsimile:

Attorney/s for Petitioner

APPENDIX C: TRANSITIONAL RULES UNDER IIRIRA

Sec. 309 Effective Dates; Transition.

(a) In General.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

(b) Promulgation of Regulations.-The Attorney General shall first promulgate regulations to carry out this subtitle by not later than 30 days before the title III-A effective date.

(c) Transition for Aliens in Proceedings.-

(1) General rule that new rules do not apply.-Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings before the title III-A effective Date-

(A) the amendments made by this subtitle shall not apply, and

(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments.

(2) Attorney General option to elect to apply new procedures.-In a case described in paragraph (1) in which an evidentiary hearing under section 236 or 242 and 242B of the Immigration and Nationality Act has not commenced as of the title III-A effective date, the Attorney General may elect to proceed under chapter 4 of title II of such Act (as amended by this subtitle). The Attorney General shall provide notice of such election to the alien involved not later than 30 days before the date any evidentiary hearing is commenced. If the Attorney General makes such election, the notice of hearing provided to the alien under section 235 or 242(a) of such Act shall be valid as if provided under section 239 of such Act (as amended by this subtitle) to confer jurisdiction on the immigration judge.

(3) Attorney General option to terminate and reinitiate proceedings.-In the case described in paragraph (1), the Attorney General may elect to terminate proceedings in which there has not been a final administrative decision and to reinitiate proceedings under chapter 4 of title II the Immigration and Nationality Act (as amended by this subtitle). Any determination in the terminated proceeding shall not be binding in the reinitiated proceeding.

(4) Transitional changes in judicial review.-In the case described in paragraph (1) in which a final order of exclusion or deportation is entered more than 30 days after the date of the enactment of this Act, notwithstanding any provision of section 106 of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act) to the contrary-

(A) in the case of judicial review of a final order of exclusion, subsection (b) of such section shall not apply and the action for judicial review shall be governed by the provisions of subsections (a) and (c) of such in the same manner as they apply to judicial review of orders of deportation;

(B) a court may not order the taking of additional evidence under section 2347(c) of title 28, United States Code;

(C) the petition for judicial review must be filed not later than 30 days after the date of the final order of exclusion or deportation;

(D) the petition for review shall be filed with the court of appeals for the judicial circuit in which the administrative proceedings before the special inquiry officer or immigration judge were completed;

(E) there shall be no appeal of any discretionary decision under section 212(c), 212(h), 212(i), 244, or 245 of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act);

(F) service of the petition for review shall not stay the deportation of an alien pending the court's decision on the petition, unless the court orders otherwise; and

(G) there shall be no appeal permitted in the case of an alien who is inadmissible or deportable by reason of having committed a criminal offense covered in section 212(a)(2) or section 241(a)(2)(A)(iii), (B), (C), or (D) of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act), or any offense covered by section 241(a)(2)(A)(ii) of such Act (as in effect on such date) for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 241(a)(2)(A)(i) of such Act (as so in effect).

APPENDIX D: WEBSITES FOR U.S. COURTS OF APPEALS

First Circuit: www.ca1.uscourts.gov

Second Circuit: www.ca2.uscourts.gov

Third Circuit: www.ca3.uscourts.gov

Fourth Circuit: www.ca4.uscourts.gov

Fifth Circuit: www.ca5.uscourts.gov

Sixth Circuit: www.ca6.uscourts.gov

Seventh Circuit: www.ca7.uscourts.gov

Eighth Circuit: www.ca8.uscourts.gov

Ninth Circuit: www.ca9.uscourts.gov

Tenth Circuit: www.ca10.uscourts.gov

Eleventh Circuit: www.ca11.uscourts.gov

DC Circuit: www.cadc.uscourts.gov

APPENDIX E: LIST OF ADDRESSES FOR SERVICE OF A PETITION FOR REVIEW

Attorney General

John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of Immigration Litigation

Thomas W. Hussey, Director
Office of Immigration Litigation
U.S. Department of Justice / Civil Division
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

BICE District Offices

Note: An asterisk following the title of Interim Field Office Director for Detention & Removal indicates that BICE has not appointed anyone to this position as of the time of this writing. Counsel should check AILA Infonet or contact the appropriate BICE office to ascertain the name of the (Interim) Field Office Director, or, alternatively the name and title of the most senior officer in the Detention & Removal unit.

Alabama

Fred Alexander, Interim Field Office
Director for Detention & Removal
Bureau of Immigration and Customs
Enforcement
Atlanta District Office
Martin Luther King Jr. Federal Building
77 Forsyth Street SW
Atlanta, GA 30303

Arizona

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Phoenix District Office
2035 North Central Avenue
Phoenix, AZ 85004

Alaska

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Anchorage District Office
620 East 10th Avenue, Suite 102
Anchorage, Alaska 99501

Arkansas

Craig Robinson, Interim Field Office
Director for Detention & Removal
Bureau of Immigration and Customs
Enforcement
701 Loyola Avenue, Room T-8011
New Orleans, LA 70113

California

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Los Angeles District Office
300 North Los Angeles Street, Room 1001
Los Angeles, CA 90012

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
San Diego District Office
U.S. Federal Building
880 Front Street, Suite 1234
San Diego, CA 92101

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
San Francisco District Office
630 Sansome Street
San Francisco, CA 94111

Colorado

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Denver District Office
4730 Paris Street
Denver, CO 80239

Connecticut

Bruce Chadbourne, Interim Field Office
Director for Detention & Removal
Bureau of Immigration and Customs
Enforcement
Boston District Office
John F. Kennedy Federal Building
Government Center
Boston, MA 02203

Delaware

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Philadelphia District Office
1600 Callowhill Street
Philadelphia, PA 19130

District of Columbia

George Sullivan, Interim Field Office
Director for Detention & Removal
Bureau of Immigration and Customs
Enforcement
Washington District Office
4420 N. Fairfax Drive
Arlington, VA 22203

Florida

John Mata, Interim Field Office Director for
Detention & Removal
Bureau of Immigration and Customs
Enforcement
Miami District Office
7880 Biscayne Boulevard
Miami, FL 33138

Georgia

Fred Alexander, Interim Field Office
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Enforcement
Atlanta District Office
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Guam

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Honolulu District Office
595 Ala Moana Boulevard
Honolulu, HI 96813

Hawaii

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Enforcement
Honolulu District Office
595 Ala Moana Boulevard
Honolulu, HI 96813

Idaho

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Bureau of Immigration and Customs
Enforcement
Helena District Office
2800 Skyway Drive
Helena, MT 59602

Illinois

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Chicago District Office
10 West Jackson Boulevard
Chicago, IL 60604

Indiana

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& Removal*
Bureau of Immigration and Customs
Enforcement
Chicago District Office
10 West Jackson Boulevard
Chicago, IL 60604

Iowa

Interim Field Office Director for Detention
& Removal*
Bureau of Immigration and Customs
Enforcement
Omaha District Office
3736 South 132nd Street
Omaha, NE 68144

Kansas

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& Removal*
Bureau of Immigration and Customs
Enforcement
Kansas City District Office
9747 Northwest Conant Avenue
Kansas City, MO 64153

Kentucky

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Louisiana

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701 Loyola Avenue, Room T-8011
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Maine

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Portland, Maine District Office
176 Gannett Drive
So. Portland, ME 04106

Maryland

Calvin McCormick, Interim Field Office
Director for Detention & Removal
Bureau of Immigration and Customs
Enforcement
Baltimore District Office
Fallon Federal Building
31 Hopkins Plaza
Baltimore, MD 21201

Massachusetts

Bruce Chadbourne, Interim Field Office
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Bureau of Immigration and Customs
Enforcement
Boston District Office
John F. Kennedy Federal Building
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Michigan

Roy Bailey, Interim Field Office Director
for Detention & Removal
Bureau of Immigration and Customs
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Detroit District Office
333 Mt. Elliot
Detroit, MI 48207

Minnesota

Interim Field Office Director for Detention
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Bureau of Immigration and Customs
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St. Paul District Office
2901 Metro Drive, Suite 100
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Mississippi

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Missouri

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Kansas City District Office
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Montana

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Helena District Office
2800 Skyway Drive
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Nebraska

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Enforcement
Omaha District Office
3736 South 132nd Street
Omaha, NE 68144

Nevada

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2035 North Central Avenue
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New Hampshire

Bruce Chadbourne, Interim Field Office
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Boston District Office
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New Jersey

John Carbone, Interim Field Office Director
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Newark District Office
970 Broad Street, Room 136
Newark, NJ 07102

New Mexico

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Bureau of Immigration and Customs
Enforcement
El Paso District Office
1545 Hawkins Boulevard, Suite 167
El Paso, TX 79925

New York

Bill Cleary, Interim Field Office Director for
Detention & Removal
Bureau of Immigration and Customs
Enforcement
Buffalo District Office
Federal Center
130 Delaware Avenue
Buffalo, NY 14202

Edward McElroy, Interim Field Office
Director for Detention & Removal
Bureau of Immigration and Customs
Enforcement
New York City District Office
26 Federal Plaza
New York City, NY 10278

North Carolina

Fred Alexander, Interim Field Office
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Atlanta District Office
Martin Luther King Jr. Federal Building
77 Forsyth Street SW
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North Dakota

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St. Paul District Office
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Ohio

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Cleveland District Office
A.J.C. Federal Building
1240 East Ninth Street, Room 1917
Cleveland, OH 44199

Oklahoma

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8101 North Stemmons Freeway
Dallas, TX 75247

Oregon

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Bureau of Immigration and Customs
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Oregon District Office
511 NW Broadway
Portland, OR 97209

Pennsylvania

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Philadelphia District Office
1600 Callowhill Street
Philadelphia, PA 19130

Puerto Rico

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Bureau of Immigration and Customs
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San Juan District Office
P.O. Box 365068
San Juan, PR 00936

Rhode Island

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Boston District Office
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Boston, MA 02203

South Carolina

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Atlanta District Office
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South Dakota

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Tennessee

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Texas

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Harlingen District Office
2102 Teege Avenue
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Houston District Office
126 Northpoint
Houston, Texas 77060

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San Antonio District Office
8940 Fourwinds Drive
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Utah

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Denver District Office
4730 Paris Street
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Vermont

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Portland, Maine District Office
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Virgin Islands

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Virginia

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Washington

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Seattle District Office
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Wisconsin

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Chicago District Office
10 West Jackson Boulevard

Wyoming

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